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FEDERAL COMMUNICATIONS COMMISSION
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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Price Cap Performance Review for Local Exchange Carriers	)	**CC Docket No. 94-1**
	)	
Treatment of Operator Services Under Price Cap Regulation	)	**CC Docket No. 93-124**
	)	
Revisions to Price Cap Rules for AT&T	)	**CC Docket No. 93-197**

COMMENTS OF SOUTHWESTERN BELL TELEPHONE COMPANY

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TABLE OF CONTENTS

CC DOCKET NO. 94-1
CC DOCKET NO. 93-124
CC DOCKET NO. 93-197

COMMENTS OF
SOUTHWESTERN BELL TELEPHONE COMPANY

SUMMARY*

As competition has increased for LEC access services over the years that LEC price cap regulation has been in effect, SWBT and other LECs have made numerous pleas for modifications to the LEC price cap plan. The changes made thus far have failed to keep pace with the changes in the industry, let alone prepare for the accelerated changes that are certain to occur. These failures, together with the Commission's refusal to affirmatively address the need for LEC regulatory reform in the Nondominant Filing Order on Remand, have combined to place LECs at an extreme disadvantage in the competitive markets they now face.

The Commission must act quickly to allow consumers to reap the maximum benefits of changes in the telecommunications marketplace. Two facts are certain: (1) The current LEC price cap is woefully in need of significant modernization and modification, and (2) immediate modification must include a regulatory framework that adapts appropriately as competition increases.

SWBT's proposals for the price cap plan can and should be implemented regardless of the current degree of access competition. SWBT calls these modifications the "baseline" regulatory framework. At the same time, SWBT suggests how the Commission's proposals for streamlined and nondominant treatment can be accommodated with reasonable criteria.

* All abbreviations used herein are referenced within the text.

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COMMENTS OF
SOUTHWESTERN BELL TELEPHONE COMPANY

Southwestern Bell Telephone Company (SWBT), pursuant to the Second Further Notice of Proposed Rulemaking (Second FNPRM),[1] hereby files its Comments on the Issues listed by the Commission in the Second FNPRM.

I. INTRODUCTION

The Commission must move quickly to establish proper market incentives in this proceeding. These incentives must be established through an adaptive regulatory framework. SWBT has repeatedly sought relief before this Commission in order to effectively respond to a marketplace that has undergone significant change since the adoption of the current interstate access charge plan.

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[1] Price Cap Performance Review for Local Exchange Carriers, Second Further Notice of Proposed Rulemaking in CC Docket No. 94-1, Further Notice of Proposed Rulemaking in CC Docket No. 93-124, and Second Further Notice Of Proposed Rulemaking in CC Docket No. 93-197, FCC 95-393 (rel. Sept. 20 1995). (Second FNPRM).

Within the past year alone, competition has grown extensively throughout SWBT's five state territory. Quality Strategies Research Company completed a study for SWBT that quantified the extent of competition for private line/special access services in two of SWBT's largest cities, Dallas and Houston. The competitors in these cities have entered a maturity phase since their networks have substantially completed their initial deployment. Competitive Access Providers (CAP) sales forces have been going head-to-head with SWBT for access customers' for some time. As a result, SWBT has lost more than one-third of the private line/special access market to competitors. These losses are continuing and may shortly mirror the losses cited by NYNEX in the New York City area.

SWBT's special access and private line services are heavily concentrated in major cities. All of the large cities in SWBT service territory have operational CAPs.[2] CAPs have also been operational for some time in medium-sized or smaller SWBT metro areas, like Tulsa, Oklahoma and Wichita, Kansas.[3] Many of these networks have been expanded significantly during the last year and CAP sales forces are aggressively selling to SWBT's base of access customers.

During the last year, CAPs have been very active in a number of metro areas that some might consider "second tier," including Little Rock, Arkansas; Oklahoma City, Oklahoma; Austin, Texas; Ft. Worth, Texas; and El Paso, Texas. Each of these metro areas have seen one or more new CAPs offer private line/special access services in the past year. While these CAP

[2] These include cities located in the metro areas of: Kansas City, Kansas/Missouri; St. Louis, Missouri; Dallas, Texas; Ft. Worth, Texas; Houston, Texas; San Antonio, Texas.

[3] A listing of cities in SWBT's service territory in which CAPs are operational is contained in Attachment A.

networks may appear to be relatively small, these have been networks built with surgical precision to focus on the highest telecommunications revenue areas within each of these areas. Companies offering wireless CAP services have also expanded and are being considered as viable alternatives by IXCs and end users. The 38 GHz frequency and traditional microwave bands are being used to offer "wireless fiber" alternative access services.

In Texas, several companies have applied for the authority to provide a complete range of telecommunications services, including access. Numerous companies plan to resell the LECs' facilities while several facility-based companies plan to provide services over their own networks.

Cable TV companies have continued to upgrade their networks with fiber and switching capabilities, expanding their ability to offer ranges of telecommunications services throughout SWBT's service areas. Cable TV companies have formed a number of additional alliances that facilitate their ability to compete directly with the LECs. Many cable operators plan to quickly become one-stop, full-service telecommunications providers.

The IXCs have very actively expanded their competition with the LECs over the last year, particularly through wireless technologies. While AT&T's purchase of McCaw may have been the most publicized, Sprint's recent alliance with several CATV companies to offer PCS services may be even more effective in producing future competition for SWBT's full line of services.

Thus, the pace of change in access competition is nothing less than dramatic. In light of this growing competition, an overriding objective for the additional pricing flexibility and relief adopted as part of the LEC Price Cap Plan should be to create conditions of regulatory parity.[4] This includes affording LECs the same ability to set prices as their competitors, including the use of volume and term discounts, customer specific pricing, zone pricing, and downward pricing flexibility needed to meet competition. The price cap itself remains as the upper limit on prices and precludes a LEC from charging monopoly prices in areas where competition may be slow to develop.

Such pricing flexibility serves extremely important functions as a public policy by allowing true competition to take place in telecommunications markets.[5] Pricing flexibility allows a LEC to meet competition by lowering prices where competitive pressures develop. This cuts to the heart of how competition benefits customers. A primary benefit of competition is that it can lead to lower prices for customers, but also sends the proper signals to market participants regarding the efficient supply of services, and thereby leads to the most efficient

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[4] Regulation should be changed immediately to recognize that the public interest is not served by applying, to one set of competitors, burdensome and anticompetitive tariff filing rules while relieving another set of competitors from those same rules. SBC Communications Inc., the parent company of SWBT, has filed for reconsideration of the Nondominant Filing Order on Remand (Tariff Filing Requirements for Nondominant Common Carriers, Order, 78 Rad. Reg. 2d (P&F) 1722 (1995)) to make this point. At the same time, however, given that the Commission currently insists upon applying different sets of rules to different competitors in the same markets, SWBT explains herein how the Commission should make numerous changes to price cap regulation to alleviate the burdens these rules create. Should the Commission (or a reviewing court) agree with SBC that the public interest no longer justifies application of different rules to different competitors, the following modifications may no longer be necessary. However, as explained in SBC's Petition, action in this docket cannot remedy all the errors cited by SBC.

[5] First, pricing flexibility serves as a screen against the entry of inefficient firms that cannot make a market more efficient. Entrants who know that existing firms are allowed to engage in legitimate pricing responses to competition will only enter a market if they feel they can operate efficiently. Second, pricing flexibility allows a market to reveal those areas in which current pricing is potentially inefficient by demonstrating where entrants wish to challenge existing firms.

market structure. Without pricing flexibility, a policy that encourages new entry may merely redistribute profits (in some instances to less efficient rivals) in a de facto market allocation, without yielding the full benefits to customers.

Regulatory parity is a critically important component of a well crafted price cap plan and should be adopted by the Commission without delay. In order to emulate the performance of competitive markets, regulation must elicit the desired outcome: regulation must be adjusted so that it provides neither entrants nor incumbents any net advantage on a forward-looking basis.[6]

The "baseline" modifications to price cap regulation, as outlined in these comments, are urgently needed today regardless of the degree of competition and should be adopted without tying it to a showing of competitiveness or to a "competitive checklist."

II. SWBT'S PROPOSAL FOR AN ADAPTIVE REGULATORY FRAMEWORK

In this proceeding, the Commission has a public interest obligation to adopt price cap rules that: (1) recognize the competitiveness of the interstate access marketplace; and (2) enable price cap LECs to effectively respond to competition -- both that which already exists and that which is certain to evolve.

In response to the questions posed by the Commission, SWBT proposes the modifications it believes are necessary to address competition in the interstate access

[6] Richard Schmalensee, "Economic Principles for Classifying Telecommunications Services as Competitive or Emerging Competitive," Position Paper Submitted by The Southern New England Telephone Company, State of Connecticut, Department of Public Utility Control, Docket No. 94-07-02, October 17, 1994, p. 7 (Schmalensee).

marketplace. First, and foremost, SWBT recommends changes to existing price cap regulation. Many of these changes should have been put in place prior to the evolution of competition.[7] Some of these changes are simply extensions of the limited flexibilities that the Commission has seen fit to establish. The remainder of these price cap changes are designed to remedy the inadequacies of the outdated interstate access charge plan.

Beyond updating the interstate access charge plan, the Commission must implement a structure which will enable price cap LECs to be more responsive to the competition that is certain to evolve. As competitors enter the marketplace and are able to offer reasonably substitutable alternatives to interstate access customers, the incumbent exchange carrier must be afforded the opportunity to effectively compete. SWBT proposes that as markets become addressable by alternative providers, streamlined regulatory treatment should be applied to the incumbent provider within that particular market.

In those markets that are determined to be significantly competitive and in which the incumbent LEC has fully complied with any requirements established by the state to open the local exchange market, SWBT proposes that the incumbent provider should be reclassified as nondominant within that particular market.

These proposals are consistent with the direction proposed by the Commission in its Second FNPRM. Absent these changes, alternate service providers will enjoy an undeserved

[7] For example: zoned pricing could have been put in place to allow more efficient pricing; the codified rate structure could already have been eliminated; new service flexibilities could have been allowed. From a public interest perspective, none of these changes need await the actual presence of access competition.

and unwarranted regulatory advantage over the incumbent LEC. This advantage will deny customers the full benefits of competition.

A. Revisions To Baseline Price Cap Regulations Should Be Adopted In Order To Begin Remedying The Deficiencies Of The Interstate Access Charge Plan.

In its Second FNPRM, the Commission has presented a number of possible changes to the current price cap rules, including simplifying the treatment of new services, allowing alternative pricing plans (APPs), eliminating the lower SBI limits and improving the price cap service basket and category structure. Such changes are a promising and necessary start to establish an effective interstate access charge plan.

"Baseline" regulation represents an improved version of the current LEC price cap plan[8] and would regulate markets that range from the total absence of any competitive alternatives to competitive conditions which are significant, but just less than the threshold required for streamlined regulation. SWBT proposes that, as part of baseline cap regulation, modifications must be made within Part 69 of the Commission's rules and regulations which will enable LECs to introduce new rate elements and subelements without a waiver. In those limited instances where the Commission has required and granted a Part 69 waiver, offerings by other LECs involving similar rate elements should be allowed to be introduced under an expedited 14-day "me too" waiver process.

The Commission should not adopt rules which attempt to categorize new services into "Track 1" and "Track 2." LECs could be required to submit a direct cost showing with the

[8] The Second FNPRM in paragraph 32 refers to three gradations of regulation: modified price cap regulation, streamlined regulation and nondominant treatment. SWBT utilizes the term baseline regulation to refer to this first gradation identified by the Commission.

new service filing on a 14-day notice period. All other new service filing requirements should be eliminated.

The Commission requests comment on the regulatory treatment of alternative pricing plans (APPs). In its prior regulation of AT&T, the Commission determined that APPs, including volume and term discounts, were appropriate. APPs are alternatives to existing LEC services and are of two types: (1) temporary offerings; and (2) permanent offerings. Promotional discount offerings should be effective for a temporary period not to exceed 90 days. An example of permanent APPs would be volume and term discounts for an existing service. All filings for APPs should be effective on 14-days' notice and should not necessitate a waiver of Part 69 rules.

The Commission should establish a 14-day notice period for filings which provide for the restructuring of existing services, regardless of whether proposed prices rise or fall.

In light of the competition which already exists within the interstate access marketplace, LECs must be permitted to offer services under contracts in response to Requests for Proposal (RFPs) submitted by customers with alternative sources of supply available to them. Contract-based tariffs filed in response to RFPs should not require Part 69 waiver requests and should be outside of price cap regulation, subject to streamlined regulation. LECs should be allowed to submit a direct cost showing under proprietary cover with the contract-based tariff filed on 14-days' notice. In addition, the LEC could be required to provide a demonstration that another supplier has responded to the customer's RFP.

All lower service band index limits should be eliminated. Zone density pricing should be expanded to all geographically-based service categories.[9] This should include transport, local switching, carrier common line (CCL) and the Interconnection Charge.

As recognized by the Commission, the existing price cap basket structure must be revised. The price cap basket structure should be simplified with services grouped according to functionality. Attachment B portrays the basket structure which the Commission should adopt. Alternatively, LECs desiring to do so may elect to utilize an optional basket structure based on the customer characteristic described above. Attachment C portrays this optional basket structure.

The baseline regulation modifications proposed above should be adopted by the Commission without requiring LECs to meet any further competitive criteria. The modifications proposed by SWBT (e.g., new service offerings, restructured services, revisions to price cap baskets, zone pricing and alternative pricing plans) are designed to accommodate the changes to the interstate access marketplace in order that economically efficient competition can evolve. These modifications foster efficient pricing and further the public interest, regardless of competitive conditions.

B. Streamlined Regulation Should Apply To Markets That Are Sufficiently Competitive.

As a substantial level of alternative supply becomes available within the relevant market area, the incumbent provider should be afforded streamlined regulation. The competitiveness of the relevant market can be determined by assessment of supply responsiveness

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[9] An example of non-geographically based service is 800 Database.

and demand responsiveness. The Commission relied on these market characteristics to adopt streamlined regulation and, eventually, nondominant status for AT&T.

1. Relevant Market Defined By Two Dimensions: Geography and Service.

Lawmakers and policy-makers define relevant markets in terms of two dimensions: geography and service. In order to define the relevant market for interstate access competition assessment, the Commission should rely on the same dimensions. The geographic dimension should identify the geographic area over which suppliers compete for the same customers. The service dimension should determine logical service groupings based upon service substitutability. Within the service dimension it may be necessary to further segment services dependent on the nature of the customer for such services.

The following process should be used for determining the geographic dimension of the relevant access market area. The geographic area within which multiple suppliers compete for the same customers within an exchange or metropolitan area must be identified. This geographic area can be referred to as the competitive footprint. The LEC wire centers in common with the competitive footprint are then identified. The geographic area comprised of these wire centers is the relevant geographic area for which competition should be measured.

Neither the existing nor the proposed service categories within price cap baskets should be used exclusively to define the service dimension for relevant market definition.

The Commission should simplify the current price cap baskets by adopting the baseline price cap basket structure proposed by SWBT. Price cap LECs should have the option of making a competitive showing to move along the adaptive regulatory framework for one or more of these service categories within a relevant market area, depending on the substitutability of services. The availability of substitutable services may depend on the particular characteristics of the customer purchasing the service (i.e., LECs may need to differentiate customers). Notably, large and small customer locations may have different alternative sources of supply available to them. Competitors commonly target customer locations with large enough demand to justify the cost associated with the deployment of the facilities and equipment necessary to deliver services. Thus, large customer locations may have substitutes available, while small customer locations in the same area may not. In other instances, alternative supply opportunities may be similar for both small and large customers.

2. Determining Relevant Access Market Competitiveness.

a. Supply Responsiveness

LECs could demonstrate supply elasticity by showing that 25 percent of the LEC's access demand in the relevant market have choices available from alternative sources. Optionally, LECs could demonstrate that customers representing 25 percent of the total demand within the particular relevant market had alternative choices. This would enable LECs operating in markets where much of the addressable demand had already switched to a competitor to achieve streamlined regulation.

Addressability demonstrates the availability of alternative supply from alternative service providers within the relevant market.[10] Addressability also reliably illustrates the presence of barriers to entry, or the lack thereof.

Addressability focuses on the physical presence of alternative providers with the ability to provide a viable alternative to customers within the relevant market.

The addressability showing would compute the ratio of relevant market demand of customers in the competitive footprint to the LEC demand or total demand within the relevant market. Where the relevant market includes services sold in different units, a reasonable equivalent could be established to express all demand in a common unit such as minutes or DS-1 equivalents similar to procedures developed for purposes of the zone density plans.

b. <u>Demand Responsiveness</u>

LECs could submit evidence to demonstrate that customers regard the services from alternative sources of supply within the relevant market as acceptable substitutes for LEC services and that they are willing to utilize those alternatives.

Such a showing should consist of evidence that customers in the same market had switched to the competitors' services, or that customers were using the services of the same or similar providers in other markets. Customer acceptance of alternatives in one access market may be used to demonstrate that the same alternatives will be acceptable in another market.

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[10] Facilities-based does not require that the facility necessarily be located within the incumbent's serving area. Technology is broadening the availability of services such that geography is no longer a limiting factor. For example, directory assistance can be provided by numerous providers in multiple areas without requiring an actual facility in each area where the service can be obtained. Therefore, the competitive footprint should be the area where the service is available, not where the facility is based.

c. Additional Competitive Showing for the Small Customer Segment.

In addition to the showings of supply and demand responsiveness described above, in order to show competition for the small customer segment (i.e., single line switching and single line Carrier Common Line for traffic originating or terminating at small customer locations), price cap LECs could also show that the state has allowed local competition and that at least one competitor has been certified to provide service and is operational.

3. Pricing Flexibility Under Streamlined Regulation.

LEC's satisfying the requirements for streamlined regulation should be permitted to remove those services from price cap regulation. Part 69 rate structure requirements should not apply. Tariff filings should require 14-days' notice. Cost support material should not be required. Contract carriage should be permitted in order for the incumbent LEC to effectively compete.

C. LECs Should Be Declared Nondominant When The Relevant Market Is Significantly Competitive.

Under this plan, SWBT proposes that LECs should be declared nondominant when the relevant market is determined to be significantly competitive such that the LEC cannot exert market power. In effect this would place the LEC on a level playing field with its competitors.

A nondominant showing can be made utilizing the relevant market model described above. Given the narrow scope of the relevant markets, LECs could have non-dominant status for particular services or in particular geographic areas or for particular classes of customers while maintaining baseline or streamlined regulation in others. LECs should also be permitted to make a nondominant showing for some large aggregation of markets that had previously been streamlined.

The competitive criteria of addressability as well as the demand responsiveness characteristics utilized for streamlined regulation should also be applicable for a determination of nondominance. For those markets previously streamlined, only a showing of supply responsiveness should be required. The threshold for nondominant status would be more stringent than that for streamlined regulation. Therefore, in order to obtain a declaration of nondominance, LECs could be required to show that customers representing fifty percent of the incumbent LEC's interstate access services demand within the relevant market area have an alternative supply available, and the LEC could also demonstrate full compliance with state requirements to open the local telecommunications markets. The creation of specific rules for local competition should be left to the state commissions to reflect the circumstances evident in each state.

Once a relevant market area is determined to be nondominant, exchange carriers should be permitted to file tariffs on one day's notice, as LEC competitors and AT&T currently do. Such tariffs shall be presumed lawful.[11] Any other flexibilities permitted nondominant carriers should be adopted for LEC markets which are declared to be nondominant.

D. Data Reporting Requirements

SWBT proposes that all interstate access providers must provide sufficient data to the Commission to make a determination as to whether customers in a relevant market indeed

[11] The Commission has found that significantly streamlined filing requirements for non-dominant common carriers serve the public interest by promoting price competition, fostering service innovation, encouraging new entry into various segments of telecommunications markets and enabling firms to respond quickly to market trends. Tariff Filing Requirements for Non-dominant Common Carriers, CC Docket No. 93-36, Memorandum Opinion and Order, 8 FCC Rcd 6752, 6761 (1993).

have alternatives to the incumbent LEC-offered services. Specifically, the Commission should require all such providers to file a description of the area in which they make services available to customers. This requirement can be satisfied by a general description of the service area (e.g., listing of zip codes served, city or county boundaries, or exchange carrier wire centers) and a list of services provided in that area, or by filing a service area map. Alternatively, all providers should be required to file, on an annual basis, detailed maps showing their network facilities within each area served, including planned additions. Further, the data reported must be appropriate to the relevant services and relevant market areas. Exchange carriers should not be responsible for reporting data regarding their competitors.

III. RESPONSES TO THE SECOND FNPRM'S SPECIFIC ISSUES

A. BASELINE MODIFICATIONS

1. New Services And Restructures

Issue 1a:

Should we relax the regulatory requirements relating to new services for some or all new services? Will there be any anti-competitive or other negative effects as a result of such modifications to the plan? If a relaxed treatment is appropriate for only certain new services, how should we distinguish between the services eligible for the simplified treatment and those which are not? What are some examples of the services that would fall into each category? How would this distinction be administered? What cost showings, notice, and other regulatory requirements are necessary with respect to the various types of new services to provide the appropriate level of regulatory oversight without hindering the efficient introduction of new services?

The Commission should indeed relax the regulatory requirements relating to all new services. As SWBT stated in its 1994 Comments[12] in this proceeding, and reiterated in

[12] SWBT Comments, filed May 9, 1994, at p. 73.

its Reply Comments,[13] new services increase the range of alternatives available to consumers while maintaining all the service options available to consumers before the new service was offered. Thus, consumers can only gain from the introduction of new services -- they cannot be made worse off.[14] Unfortunately, competitors seek to gain an advantage at the expense of the consumer by gaming the regulatory processes. The LECs' competitors currently prevent LECs from meeting customers' needs through these processes. Competitors would rather thwart the introduction of new LEC services, than face the natural consequences of competition: intense rivalry to offer the best value for new and advanced products and services.

The Commission should generally accept that new services will indeed benefit consumers, and design its rules accordingly. SWBT's proposal for the introduction of new services is detailed below in the section entitled "Part 69 Waiver Process" (Issues 4a and 4b).

The Commission should also clarify or modify its rules regarding LEC services that are currently excluded from price cap regulation. Current rules imply that the tariff filing requirements for both new and existing services that are not subject to price cap regulation require the LEC to forecast the costs and revenues of the service. This implication is clearly a remnant of rate-of-return regulation.

The rules outlining cost support requirements for new services should be revised to eliminate rate-of-return principles. The filing requirements could be premised upon the

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[13] SWBT Reply Comments, filed June 29, 1994, at p. 64.

[14] This fact is recognized in the Communications Act of 1934, "It shall be the policy of the United States to encourage the provision of new technologies and services to the public. Any person or party (other than the Commission) who opposes a new technology or service proposed to be permitted under this Act shall have the burden to demonstrate that such proposal is inconsistent with the public interest." 47 U.S.C. 157(a) [emphasis added]

regulatory classification of the requesting LEC (i.e., price cap or rate-of-return). Price cap LECs introducing new services should be permitted to file new services without a requirement for data that is relevant only to estimated rate-of-return calculations. The existing Part 61.49 rules for the introduction of new services are virtually a rewrite of the Part 61.38 rules that were in place prior to price cap regulation. Part 61.38 of the rules, however, should not apply to LECs operating under price cap regulation because projections of costs and revenues are not relevant review criteria for price cap LECs. Price cap LECs should not be required to forecast total costs and revenues for their new price cap services. Prices for new services should cover the direct costs to provide the services plus a contribution to overhead. Therefore, the simple unit cost and unit price provide sufficient data to determine whether the proposed rates cover the direct cost and a contribution to overhead.

Streamlined regulation rules should apply to all new and existing services not subject to price cap regulation that are offered by price cap LECs.

Issue 1b:

Should we modify the definition of new services to exclude APPs or otherwise?

Alternative pricing plans (APPs) are appropriate marketing tools. APPs are pricing options for existing services. As SWBT stated in its comments regarding APPs in the AT&T price cap plan,[15] the "creation of additional regulatory classifications of services may result in unnecessary complexities and disputes." Therefore, the Commission should create an APPs category that distinguishes them from new services and which does not subject APPs to any unnecessary or unwarranted regulation.

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[15] SWBT Comments, CC Docket Nos. 87-313 and 93-197, filed June 30, 1995, p. 15.

Issue 1c:

Should we modify the definition of restructured services? What, if any, changes should be made with respect to the treatment of restructured services?

The existing definition for restructured services is sufficient to distinguish between new services and restructures. While cost showings are not necessary for such filings, it is necessary to provide an analysis of the effects on demand, and on the respective price cap indices, that the restructure will yield, in those markets not yet subject to relaxed regulation.

The Commission recognizes that the current 45-day notice requirement is too long for restructured service filings. The Second FNPRM suggests that a 15-day period be used when the restructuring involves rate increases and a 7-day notice period be used for restructure filings involving rate decreases.[16] Given the existing API and SBI constraints on restructure filings, there is absolutely no need to distinguish between filings that increase rates and those that decrease rates. Clearly, SWBT does not oppose shorter notice periods, but recommends the use of standard 14-day notice periods for restructures, including those that would increase rates. The basis for this position is the fact that as long as a carrier filing complies with the appropriate price cap indices (i.e. within SBI bands and API equal to or lower than PCI), a carrier can simply restructure rates at revenue neutral price levels and then file a 14-day price change to raise rates. Therefore, the use of a notice period longer than 14 days for restructure filings is inappropriate. Existing price cap constraints contain the necessary safeguards related to price increases. Different notice periods for restructures which increase rates could be artificial and wasteful.

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[16] Second FNPRM, para. 51.

Paragraph 43 of the Second FNPRM recognizes that restructure filings do not require any cost support: "restructured service offerings must be filed on 45 days' notice and no cost showing is required." However, paragraph 50 states "thus, we propose to retain our current cost support filing requirements for restructured services." The Commission should clarify that paragraph 50 was not intended to modify current rules to require cost support filings for restructured service filings (47 C.F.R. 61.46(c), 61.47(d) and 61.47(f)).

2. Alternative Price Plans

Issue 2a:

Should we allow LECs to file APPs in addition to the volume and term discounts currently permitted? Under what terms and conditions? How should APPs be defined? Would the introduction of APPs cause any anti-competitive effects? If we permit LECs to offer APPs, what notice, cost support, and other requirements should be applied to those tariff filings? Should the rules be different depending on the particular LEC service basket or services involved and, if so, how? How and when should APPs be integrated into the price cap plan?

LECs must be allowed to file APPs, including permanent volume and term discount plans, as they are a legitimate business practice designed to meet customer expectations. Such filings should be allowed on a streamlined basis without cost support. APPs are an alternative to existing tariffed access services. The existing tariffed services which remain available are subject to price cap constraints that prevent unreasonable rates. Thus, the prices of the alternatives (APPs) are constrained by the prices of the substitutable non-APP services. As SWBT stated in its comments regarding APP's in the AT&T price cap plan, "even absent services available from a carrier's competitors, the availability of existing services subject to price regulation provides a strong discipline that prevents the carrier from offering new alternatives that are less attractive than those existing services."[17] After the initial availability period (e.g., 90 days), permanent APPs should be incorporated into the LEC's price cap indices.

The Commission should permit APPs as permanent volume and term discount offerings. If the APP is or becomes a permanent offering, the APP would be brought into the appropriate basket utilizing recast demand data based on actual demand data from the initial availability period. Similar recast demand would be utilized to accommodate annual filing requirements until a full year of base period demand can be collected. This is the same treatment used for recasting demand in restructured service filings.

Price cap incorporation rules would apply only to those APPs which LECs decide to incorporate as permanent offerings. The LEC would have the option to make a temporary offering permanent at the end of the initial availability period. LECs should not be prohibited from offering more than one promotion or permanent discounted offering for the same service within one year.

Furthermore, LECs should be allowed to file APPs and afforded the same conditions that previously applied to AT&T, including the creation of "headroom" resulting from the price reduction inherent in offering of lower-priced APPs.[18] The APP should create headroom credit whether the APP originated as a promotion or as a permanent offering. The issue of concern for the Commission in examining AT&T's APP practices had been the use of

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[17] SWBT Comments, CC Docket Nos. 87-313 and 93-197, filed June 30, 1995, p. 15.

[18] The Commission has interpreted the existing price cap rules to allow API and SBI credit for APPs (See 61.46(b) & (c) & 61.47(c) & (d)). Therefore, since the Commission has indicated that the currently-allowed LEC term and volume discounts are APPs, LECs would also be entitled to reflect the headroom created by these offerings in their indexes.

forecasted demand rather than historical demand to calculate the credit. The recasting of demand is not the same as forecasting next year's demand; instead it involves apportioning the existing actual demand into the APP and non-APP categories based on actual experience. This approach leaves little discretion to the LEC and would not raise any concerns that cannot be promptly addressed in the tariff review process. If this approach is used, true-ups to historical APP demand would not be required and would conflict with the basic price cap plan concept of static base period demand.[19]

Issue 2b:

If we do not generally permit LECs to introduce APPs, should we nevertheless permit volume and term discounts for switched access services other than those currently permitted? If so, should we condition such offerings on a showing of competitive presence similar to the conditions adopted in the Switched Transport Expanded Interconnection Order or on the other measures of competition discussed in this Second Further Notice in the geographic areas where such competition exists?

Volume and term discounts must be permitted, because LEC customers have substitutable alternatives.[20] There are several reasons why volume discounts are in the public interest and should be allowed by the Commission.

Volume discounts are a common business pricing practice. Examples of volume discounts are readily found in the telecommunications industry.[21] Volume and term discounts

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[19] See SWBT Comments "In the Matter of Revision to Price Cap Rules for AT&T," CC Docket No. 93-197, filed June 30, 1995, p. 16.

[20] Alternatives include those available from the LEC. Since volume and term discounts are permanent APPs, the continued existence of the LEC-provided existing service is assured.

[21] For example, WATS and similar services allow large volume consumers (typically corporations and various governmental entities) to purchase long distance at lower per-minute prices than those available to smaller volume toll users. Numerous optional toll calling plans are also offered by IXCs and LECs with toll price discounts to customers whose usage exceeds

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